

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD ELLO,

Plaintiff,

-v-

ISHRI SINGH, in his individual and official capacities; RAYMOND POCINO, Vice President and Eastern Regional Manager of Laborers International Union of North America, in his individual and official capacities; LABORERS INTERNATIONAL UNION OF NORTH AMERICA; LABORERS-EMPLOYERS COOPERATION AND EDUCATIONAL TRUST FUND; RAYMOND POCINO, Trustee, in his individual and official capacities; MASON TENDERS DISTRICT COUNCIL TRUST FUNDS; JOHN VIRGA, Funds Director, in his individual capacities; JOHN and JANE DOES A through D,

Defendants.

Case No. 05-CV-9625 (KMK)

ORDER

KENNETH M. KARAS, District Judge:

On May 7, 2007, Plaintiff's counsel wrote to the Court noting that "Plaintiff's Amended Summons and complaint have been on file with the Court since November 20, 2006" and urging the Court to decide Plaintiff's Motion to File a Proposed Second Amended Complaint without oral argument. (Ruth M. Pollack, Esq. Letter to the Court, May 7, 2007.)¹ The Court's Individual Practices state that "[w]here the parties are represented by counsel oral argument will be held on all motions." Hon. Kenneth M. Karas, Individual Practices 2(E), *available at*

¹This letter was also improperly submitted by Pollack to the Court's Electronic Case Filing System (ECF). Letters, such as this one, are not accepted by ECF, but it appears as docket entry 66, nonetheless.

http://www1.nysd.uscourts.gov/judge_info.php?id=89. In accord with the Court's practices, the Court issued an Order on June 18, 2007, scheduling oral argument on the Motion for July 19, 2007. (Doc. No. 67.)

On June 27, 2007, Kathleen M. McKenna, Esq., counsel for several Defendants in this action, asked the Court to reschedule to July 19th argument date so she could "attend to medical treatment of a family member out of state which [was] scheduled for that week." (Kathleen M. McKenna, Esq. Letter to the Court, June 27, 2007; Doc. No. 68.) McKenna's letter explained that she left a telephone message relaying her request for Plaintiff's counsel, Ruth M. Pollack, Esq., and for Samuel Rosenthal, Esq., counsel for the union Defendants. (*Id.*) The letter states that union defendants consented to McKenna's request and that Pollack had not returned McKenna's message. (*Id.*) McKenna's letter also stated that she had solicited new dates to reschedule the argument that were acceptable to the union Defendants, and that she was prepared to do the same with Pollack. (*Id.*)

Sometime after June 28, 2007, at 10:18 am, which was when the Court received McKenna's letter, the Court's law clerk contacted McKenna to get the list of mutually acceptable dates for rescheduling the oral argument. During that conversation, McKenna told the clerk that she had discussed the matter with Pollack and that Pollack stated that July 17, 2007 at 10:00 am, which was a date proposed by the Court, was unavailable, because her client could not be present on that date. Pollack did not represent to McKenna that Pollack was unavailable to appear before the Court on July 17th. On June 29, 2007, the Court So Ordered McKenna's letter and set oral argument for July 17, 2007 at 10:00 am despite Pollack's objection, as explained by McKenna to

the Court, because argument on the Motion presented legal questions, not factual questions which could have required her client's presence. (*Id.*)

It was not until Wednesday, July 11, 2007, that the Court first learned that Pollack claimed that she was unable to attend the oral argument scheduled for the following Tuesday, because she had two criminal matters scheduled for that day. Pollack made no mention that July 17th was inconvenient for her client. On that same day, Pollack informed the Court's clerk that she would fax the Court a letter on the subject within a matter of hours. The fax came the next day, and in it, Pollack states that she has "two criminal cases on for July 17, 2007 and will then be unavailable for the balance of the month." (Ruth M. Pollack, Esq. Letter to the Court, July 11, 2007.)² Pollack also states that she had already consented to McKenna's request to move the argument date from July 19th, which McKenna contests in a separate letter to the Court. (Kathleen M. McKenna, Esq. Letter to the Court, July 12, 2007.) Pollack proposed August 1st and 2nd as alternate dates without discussing the matter with the Court, which is unavailable on those dates. Furthermore, as explained to the Court's clerk, those dates are only available to McKenna, because she has reluctantly (and understandably so) agreed to take a hiatus from a scheduled vacation to argue the Motion on with date.

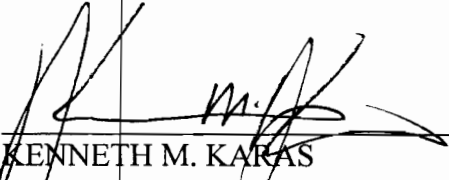
The same day the Court received Pollack's letter - July 12th - the Court's clerk left a telephone message for Pollack and sent her an email requesting the names of the judges she is scheduled to appear before in her two criminal matters on July 17th. Pollack is yet to respond.

²This letter states that it was sent to opposing counsel via ECF. Again, ECF does not accept letters. Because Pollack has refused to comply with this basic requirement, the Court sent copies of Pollack's letter to opposing counsel via facsimile.

In light of the facts outlined above, Pollack is ORDERED to supply the Court by noon on July 16th the names and telephone numbers of the two judges she is scheduled to appear before on July 17, 2007 that prevent her from attending oral argument in this Court on Plaintiff's Motion.

SO ORDERED.

Dated: July 13, 2007
New York, New York


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

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